

No. 16442 ✓

United States
Court of Appeals
for the Ninth Circuit

O. W. IRWIN, Trustee of the Estate of General
Equipment Co., a Co-partnership Composed of
Wallace D. Loe and John O. Currence and
Wallace D. Loe and John O. Currence, Indi-
vidually, Bankrupts,

Appellant,

vs.

S. H. TANNER,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

JUN 17 1959

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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In the Southern Division of the United States
District Court for the Northern District of
California

No. 51656—In Bankruptcy

In the Matter of

GENERAL EQUIPMENT CO., a Co-partnership,
Composed of Wallace D. Loe and John O.
Currence, and WALLACE D. LOE and JOHN
O. CURRENCE, Individually,
Bankrupts.

RECEIVER'S PETITION FOR LEAVE TO
SELL PERSONAL PROPERTY FREE
AND CLEAR OF LIENS

Comes now O. W. Irwin and respectfully represents:

That he is the duly appointed, qualified and acting Receiver of the estates and effects of the bankrupts above named.

That among the assets of said estates which came into the possession of your Petitioner, as such Receiver, are certain tools and equipment as set forth in that certain chattel mortgage in favor of B. H. Tanner, dated August 31, 1957.

That your Petitioner is informed, believes and therefore represents that B. H. Tanner claims an interest in or a lien upon the above-described personal property, the exact nature, extent and/or validity of which said claim is unknown to your

Petitioner, but which said purported claim of lien or interest therein your Petitioner verily believes and therefore represents to be invalid as against your Petitioner, as such Receiver.

That by reason of the premises, your Petitioner represents that it would be to the best interests of said estates if the relief hereinafter prayed were, by this Court, to be granted.

Wherefore, your Petitioner prays for an Order authorizing him to sell the above-described personal property of said estates free and clear of any lien, claim, right or interest therein whatsoever in favor of said B. H. Tanner; or for such other, further or different order or relief as to this Honorable Court may seem just in the premises.

O. W. IRWIN,

Receiver.

By /s/ DANIEL ARONSON, JR.,

One of His Attorneys.

Duly Verified.

[Endorsed]: Filed August 1, 1958, Referee.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon consideration of the annexed duly verified Petition herein filed by O. W. Irwin, Receiver of the estates of the bankrupts above named, and it appearing therefrom that it would be to the best

interests of said estates so to do, and good cause appearing therefor,

Now, on the motion of Messrs. Shapro & Rothschild, attorneys for said Receiver,

It Is Hereby Ordered that B. H. Tanner do personally be and appear before the Hon. Bernard J. Abbott, Referee in Bankruptcy, in Room A, Civic Auditorium, Market and San Carlos Streets, at San Jose, in said District, on the 15th day of August, 1958, at the hour of 2:00 o'clock p.m., then and there to show cause, if any he has, why the relief prayed for in said annexed Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens should not be granted; and

It Is Further Ordered that a true copy of this Order, together with a true copy of said Receiver's Petition, may be served upon said respondent at any time not less than five (5) days prior to the aforesaid hearing hereof.

Dated at San Jose, in said District, this 1st day of August, 1958.

/s/ BERNARD J. ABBOTT,
Referee in Bankruptcy.

[Endorsed]: Filed August 1, 1958, Referee.

[Title of District Court and Cause.]

ORDER DENYING RECEIVER'S PETITION
FOR LEAVE TO SELL PERSONAL PROP-
ERTY FREE AND CLEAR OF LIENS

The duly verified Petition for Leave to Sell Personal Property Free and clear of Liens heretofore filed herein by O. W. Irwin, Receiver of the estates of the above-named bankrupts, together with the Order to Show Cause thereon issued herein on the 1st day of August, 1958, having regularly come on for hearing before the above-entitled Court on the 15th day of August, 1958, and on the 22nd day of August, 1958, said Receiver being represented by Messrs. Shapro & Rothschild (Arthur P. Shapro, Esq., and Daniel Aronson, Jr., Esq.) appearing, his attorneys, and respondent, B. H. Tanner, being personally present and represented by Messrs. Twohig, Weingarten & Haas (Myron B. Haas, Esq., appearing), his attorneys, and evidence both oral and documentary having been adduced by the respective parties upon the issues involved and the matter having been duly argued and submitted to the Court for decision, and the Court being fully advised in the premises, Finds:

1. That said Respondent at the time of the commencement of the above-entitled proceedings was the owner and holder of a chattel mortgage upon the personal property of said bankrupts more particularly described in said chattel mortgage, which said chattel mortgage was dated the 31st day of

August, 1957, and recorded the 16th day of September, 1957, in the office of the County Recorder of Monterey County, and which said Chattel Mortgage bears the notarial acknowledgment of Saul M. Weingarten as Notary Public in and for Monterey County, dated the 31st day of August, 1957.

2. That it appeared from the testimony of the said Respondent and of said bankrupts that said chattel mortgage was not signed by the mortgagors in the presence of the said Notary Public but was signed in the place of business of said bankrupts, delivered by said bankrupts to said Respondent mortgagee and by him delivered to the said Weingarten on the 13th day of September, 1957, and according to the testimony of said Notary Public was thereafter and on said last mentioned date acknowledged by said mortgagors.

3. That the consideration for said chattel mortgage was not delivered to said mortgagee by said Saul M. Weingarten until the said 13th day of September, 1957.

Wherefrom, the Court Concludes:

1. That there was no unreasonable delay in the recordation of the said chattel mortgage given by said bankrupts as buyers of General Equipment Company to Respondent B. H. Tanner as seller thereof.

2. That solely by reason of the testimony of Saul M. Weingarten, Notary Public, as to the

acknowledgment of said chattel mortgage, said chattel mortgage was properly executed, acknowledged and recorded and is a valid and existing lien upon the personal property as against the estates of the above-named bankrupts (it is here noted that the testimony of said Notary Public on the subject of the alleged acknowledgment of said chattel mortgage was admitted by the Court over the objection thereto of counsel for said Receiver, which objection was made upon the grounds that said testimony would be incompetent, irrelevant and immaterial and that the questions which elicited such testimony from said Notary Public tended to impeach the testimony theretofore adduced by Respondent and accepted by the Court as to the lack of acknowledgment of said chattel mortgage by the mortgagors therein named), and good cause appearing therefor,

It Is Hereby Ordered, Adjudged and Decreed that said Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens be, and it is hereby denied.

Dated at San Jose, in said District, this 3rd day of November, 1958.

/s/ BERNARD J. ABROTT,
Referee in Bankruptcy.

[Endorsed]: Filed November 3, 1958, Referee.

[Title of District Court and Cause.]

PETITION FOR REVIEW

Comes now O. W. Irwin, the duly appointed, qualified and acting Trustee of the estates of the bankrupts above named and respectfully represents:

1. That your Petitioner is a party aggrieved by the order denying Receiver's Petition for Leave to sell Personal Property free and clear of liens heretofore made and entered herein by Honorable Bernard J. Abrott, Referee in Bankruptcy of the above-entitled Court on the 3rd day of November, 1958, a full, true and correct copy of which said Order Denying Receiver's Petition for Leave to sell Personal Property free and clear of liens is annexed hereto marked Exhibit "A" specifically referred to and made a part hereof.

2. That the aforesaid Order denying Receiver's Petition for Leave to Sell Personal Property free and clear of liens dated the 3rd day of November, 1958, is erroneous in each and all of the following particulars, viz:

(a) That the finding of fact contained therein and numbered 2 is contrary to the competent evidence adduced upon the trial of the issues joined between your Petitioner and Respondent B. H. Tanner by your Petitioner's Petition for Leave to Sell Personal Property free and clear of liens.

(b) That the aforesaid finding of fact is not supported by the competent evidence adduced upon

the trial of the aforesaid issues more particularly referred to in Order denying Receiver's Petition for Leave to Sell Personal Property free and clear of liens.

(c) That the conclusion of law made by said Referee in Bankruptcy and numbered 2 thereof is contrary to law in that it is not supported by competent evidence adduced upon the trial of said issues more particularly referred to in said Order denying Receiver's Petition for Leave to Sell Personal Property free and clear of liens.

(d) That it affirmatively appears from all of the evidence adduced upon the trial of said issues that the chattel mortgage was not acknowledged according to law.

(e) That it affirmatively appears from all of the evidence adduced upon the trial of said issues and from said Order denying Receiver's Petition for Leave to Sell Personal Property free and clear of liens that said Referee in Bankruptcy based his Order solely upon the testimony of the Notary Public as to the acknowledgment of said chattel mortgage, and which testimony was admitted over the proper objection of your Petitioner.

Wherefore, your Petitioner prays that the aforesaid Order denying Receiver's Petition for Leave to Sell Personal Property free and clear of liens heretofore made and entered herein by said Referee in Bankruptcy on the 3rd day of November, 1958, be reviewed by a Judge of the above-entitled Court

in accordance with the provisions of Section 39 (c) of the Bankruptcy Act, and that said Order denying Receiver's Petition for Leave to Sell personal property free and clear of liens be, by said Judge, reversed with instructions to said Referee in Bankruptcy to make and enter herein such Order in favor of your Petitioner, as such Trustee, of the estates of the above-named bankrupts, upon his said Petition for leave to sell personal property free and clear of liens, as said Judge may, upon such review, determine to be meet and proper in the premises, and for such other, further and additional order as to the Court may seem proper in the premises.

O. W. IRWIN,
Trustee;

By /s/ DANIEL ARONSON, JR.,
One of His Attorneys.

Duly Verified.

[Endorsed]: Filed November 7, 1958, Referee.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON PETITION
FOR REVIEW OF ORDER DENYING RE-
CEIVER'S PETITION FOR LEAVE TO
SELL PERSONAL PROPERTY FREE AND
CLEAR OF LIENS

The undersigned, one of the Referees in Bankruptcy, in accordance with the provisions of Section

39 a (8) of the Bankruptcy Act, hereby certifies as follows:

I.

Preliminary Proceedings

That on the 25th day of June, 1958, a voluntary petition in bankruptcy was filed with the above-entitled Court by General Equipment Co., a co-partnership composed of Wallace D. Loe and John O. Currence, and Wallace D. Loe and John O. Currence, individually, and that thereafter said General Equipment Co., a co-partnership composed of Wallace D. Loe and John O. Currence, and Wallace D. Loe and John O. Currence, individually, were duly adjudged bankrupt, and the matter was referred to the undersigned Referee to take such further proceedings as might be required under the provisions of the Bankruptcy Act.

That thereafter, and on the 30th day of June, 1958, O. W. Irwin of the City of Monterey, State of California, District aforesaid, was appointed Receiver of the estates of said bankrupts, and thereafter duly qualified as such Receiver.

That thereafter, and on the first day of August, 1958, O. W. Irwin, as such Receiver, filed with the above-entitled Court his Petition for Leave to Sell Personal Property Free and Clear of Liens, and on the same day, the undersigned Referee in Bankruptcy issued an Order to Show Cause on said Petition, which Order to Show Cause fixed the 15th

day of August, 1958, as the date for the hearing of said Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens (the original of which Petition for Leave to Sell Personal Property Free and Clear of Liens and Order to Show Cause are forwarded herewith as part of this Certificate).

That thereafter, and on the 15th day of August, 1958, O. W. Irwin of the City of Monterey, State of California, District aforesaid, was appointed Trustee, of the estates of said bankrupts, and thereafter duly qualified as such Trustee, and thereafter in all matters succeeded in the place and stead of said Receiver.

That after hearing the evidence and considering the authorities, the undersigned Referee received a proposed form of Referee's Findings and Order from counsel for the Respondent B. H. Tanner (the original of which Findings and Order is forwarded herewith as part of this Certificate); and that thereafter the undersigned Referee received a proposed Order Denying Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens, and which Order the undersigned Referee signed on the 3rd day of November, 1958, and filed in these proceedings (the original of which Order Denying Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens is forwarded herewith as part of this Certificate.

II.

Statement of Facts

The facts as developed on the hearings of said matter and as set forth in the Reporter's Transcript of said hearings (the original of which Reporter's Transcript is forwarded herewith as part of this Certificate), are:

In August, 1957, Respondent, B. H. Tanner, entered into an agreement to sell the business known as General Equipment Co., to a partnership which was the predecessor of this bankrupt, and which Agreement was reduced to writing and is dated the 27th day of August, 1957, and which Agreement is Respondent's Exhibit No. 1 in evidence (the original of which Exhibit No. 1 is forwarded herewith as part of this Certificate). That thereafter said business was sold by Tanner to the bankrupt and a chattel mortgage dated the 31st day of August, 1957, was given by the bankrupt to Tanner covering the personal property which is the subject of this litigation, and which mortgage is Trustee's Exhibit No. 1 in evidence (the original of which Exhibit No. 1 is forwarded herewith as part of this Certificate). The \$5,000 payment called for in the chattel mortgage was delivered to Tanner by check on the 13th day of September, 1957, which check is Respondent's Exhibit No. 2 in evidence (the original of which Exhibit No. 2 is forwarded herewith as part of this Certificate), and said chattel mortgage was thereafter and on September 16, 1957,

duly recorded by said Respondent. The bankrupts, Loe and Currence testified that the mortgage was signed on the date that it bears and in the office of the attorneys for Respondent, Tanner; the witnesses of Respondent, Hutchison, and Montgomery, who were part of the partnership who bought the business and executed the chattel mortgage, testified that the mortgage was signed by all four partners at the place of business, and Respondent, Tanner, also so testified; and said Respondent's witnesses further testified that Tanner then took the mortgage to the office of his attorneys, where Saul M. Weingarten then placed upon said mortgage his notarial acknowledgment and delivered to Tanner the \$5,000 check.

The notary, Weingarten, testified that although the mortgage bears the date of the 31st day of August, 1957, he executed his notarial acknowledgment on September 13, 1957, when said mortgage was brought to his office by Respondent, Tanner, and he further testified that the mortgagors acknowledged their signatures at that time.

III.

Hearings

At the times and places fixed for the hearing of said Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens, there appeared before the undersigned Arthur P. Shapro, Esq., and Daniel Aronson, Jr., Esq., of Shapro & Roths-

child, San Francisco, California, for the Trustee, and Myron B. Haas, Esq., of Twohig, Weingarten & Schmidt, of Seaside, California, for the Respondent; said matter was heard and considered by the undersigned upon the records and pleadings as hereinabove set forth.

IV.

Referee's Findings

1. That said Respondent at the time of the commencement of the above-entitled proceedings was the owner and holder of a chattel mortgage upon the personal property of said bankrupts more particularly described in said chattel mortgage, which said chattel mortgage was dated the 31st day of August, 1957, and recorded the 16th day of September, 1957, in the office of the County Recorder of Monterey County, and which said chattel mortgage bears the notarial acknowledgment of Saul M. Weingarten as Notary Public in and for Monterey County, dated the 31st day of August, 1957.

2. That it appeared from the testimony of the said Respondent and of said bankrupts that said chattel mortgage was not signed by the mortgagors in the presence of the said Notary Public, but was signed in the place of business of said bankrupts, delivered by said bankrupts to said Respondent mortgagee and by him delivered to the said Weingarten on the 13th day of September, 1957, and according to the testimony of said Notary Public was

thereafter and on said last mentioned date acknowledged by said mortgagors.

3. That the consideration for said chattel mortgage was not delivered to said mortgagee by said Saul M. Weingarten until the said 13th day of September, 1957.

V.

Statement of Question Presented

The question involved between the parties, which question by his order of November 3, 1958, the undersigned Referee answered in the negative is:

“Is the chattel mortgage here in question invalid by reason of the alleged failure of the Notary Public to properly acknowledge said document?”

VI.

Petition for Review

On the 7th day of November, 1958, and within the time allowed by law therefor, said Trustee, O. W. Irwin, filed his Petition for Review (which original Petition for Review is forwarded herewith as part of this Certificate), of the undersigned Referee's Order Denying Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens.

VII.

Original Documents

1. Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens and Order to Show Cause thereon.

2. Reporter's Transcript of Testimony.
3. Referee's Findings and Order.
4. Order Denying Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens.
5. Respondent's Exhibit No. 1—Agreement.
6. Trustee's Exhibit No. 1—Chattel Mortgage.
7. Respondent's Exhibit No. 2—Check.
8. Respondent's letter memorandum of September 2, 1958.
9. Trustee's letter memorandum of September 11, 1958.
10. Petition for Review.

Dated at Oakland, California, in said District, this 8th day of December, 1958.

Respectfully submitted,

/s/ BERNARD J. ABROTT,
Referee in Bankruptcy.

[Endorsed]: Filed December 12, 1958, U.S.D.C.

[Title of District Court and Cause.]

ORDER

The Trustee in Bankruptcy has applied for review of the Referee's order denying Receiver's petition for leave to sell personal property free and clear of liens. This motion has been argued and

submitted on briefs. It is the finding of this Court that the chattel mortgage here in question is valid and constitutes a proper lien on the property.

Accordingly, It Is Ordered, that the petition of the Trustee is denied and the ruling of the Referee in Bankruptcy be, and hereby is affirmed.

Dated: March 10, 1959.

/s/ LLOYD H. BURKE,
United States District Judge.

[Endorsed]: Filed March 10, 1959, U.S.D.C.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that O. W. Irwin, the duly appointed, qualified and acting Trustee of the estate of the above-named bankrupts, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Order of Honorable Lloyd H. Burke, Judge of the above-entitled Court, signed and filed herein on the 10th day of March, 1959, affirming the Order Denying Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens, made by Honorable Bernard J. Abrott, one of the Referees in Bankruptcy of the above-entitled Court on the 3rd day of November, 1958, and from the whole thereof.

Dated at Burlingame, California, in said District,
this 30th day of March, 1959.

SHAPRO & ROTHCHILD, and
JAMES M. CONNERS,

By /s/ DANIEL ARONSON, JR.,
Attorneys for O. W. Irwin, Trustee of the Estate of
the Bankrupts Above Named.

[Endorsed]: Filed March 31, 1959, U.S.D.C.

In the United States District Court, for the North-
ern District of California, Southern Divi-
sion

No. 51656—In Bankruptcy

In the Matter of

GENERAL EQUIPMENT COMPANY,

Bankrupt.

HEARING ON ORDER TO SHOW CAUSE

First Meeting of Creditors

Held Before Hon. Mernard J. Abrott, in Room A,
Civic Auditorium, San Jose, California, on
August 15, 1958.

Following the election of a Trustee, Mr. Loe and
Mr. Currence were sworn as witnesses for the
Trustee, and testified.

MR. LOE AND MR. CURRENCE

Direct Examination

By Mr. Shapro:

Q. You bought this business, gentlemen, when?

Mr. Currence: September 1, 1957.

Q. What was the total purchase price?

A. \$31,000.00 some odd dollars.

Q. How much did you pay down, approximately?

A. \$5,000.00.

Q. How was that contributed—by the two of you equally?

A. No—there were four of us; it was \$1,250.00 each.

The Court: Mr. Loe, you answer the questions, unless you need help from Mr. Currence, so the reporter will know who is speaking.

Q. (By Mr. Shapro): Mr. Loe, the original General Equipment Company was composed of yourself, Mr. Currence, Mr. Hutchison and Mr. Montgomery?

A. Right.

Q. When did Hutchison and Montgomery withdraw? [1*]

A. February, 1958.

Q. Were they paid anything, or did they withdraw any assets at the time they withdrew from the company?

A. Hutchison was given \$900.00 cash and Jack Montgomery \$500.00, with a personal note from each of us for the balance between that and whatever they drew and what John——

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Mr. Loe and Mr. Currence.)

Q. What they owed on their personal note, around \$600.00?

A. A personal note for about \$600.00 for each one of them.

Mr. Shapro: I have no further questions on general examination.

The Court: Are there any other creditors in court who desire to ask other questions of either Mr. Loe or Mr. Currence, of General Equipment Company? This has nothing to do with the Order to Show Cause?

Mr. Shapro: No.

Mr. Haas: This is based on the ground that the chattel mortgage given by the original four partners to Mr. Tanner, as I understood when I spoke to Mr. Aronson—my understanding was that it was not recorded at the time the mortgage bears, I propose to show, first—

Mr. Shapro: Please, Counsel, in view of the fact that your witnesses are here, I prefer that you do not make a statement of what you propose to show, because there is such a thing as leading the witness.

The Court: The Trustee waives any defect by reason of the respondent not filing an answer for the partnership? [2]

Mr. Shapro: Oh yes, we are only interested in the facts, your Honor. Since the burden is mine to show that the mortgage is not good, Mr. Haas, perhaps we can dispose of that.

Q. Are you familiar, Mr. Loe, with the names of the four gentlemen who bought the business?

(Testimony of Mr. Loe and Mr. Currence.)

A. I am.

Q. There are enumerated in the mortgage some motor vehicles—a Dodge, Studebaker, and so forth?

A. Yes.

Q. Were the pink slips to those motor vehicles endorsed over to Mr. Tanner at that time?

A. I don't know; I never saw the pink slips.

Q. (By Mr. Shapro): Would you answer the question the same way, Mr. Currence?

A. Yes, sir, I never saw them.

Q. The mortgage in question is dated August 31; I show you a photostatic copy of it; it bears the notarial acknowledgment before Mr. Weingarten, as the 31st of August, 1957. Did you personally—confining it to you, Mr. Loe—did you sign that mortgage in Mr. Haas' office or Mr. Weingarten's office on the 31st of August?

A. In Mr. Weingarten's office.

Q. On that date?

A. It was on that date.

Q. And Mr. Currence?

A. Yes, I think you will find that all four of us went in there at the same time.

Q. It was not on August 31st?

A. I believe it was.

Q. And was the mortgage left there at that time?

A. Yes.

Q. In Weingarten's office?

A. Yes; we didn't get a copy of the chattel mortgage for over a month.

(Testimony of Mr. Loe and Mr. Currence.)

Mr. Shapro: I have no further questions of these gentlemen at [3] this time.

Cross-Examination

By Mr. Haas:

Q. Did you sign any other documents in connection with this sale?

A. Loe signed a partnership agreement.

Q. Didn't you sign a purchase agreement? I have a copy of it here.

A. Well, then, I must have signed it, if you have it there.

Q. Were there any of these documents that were not signed in Mr. Weingarten's office?

A. What documents not signed; what documents are you speaking of?

Q. You stated you signed a partnership agreement? A. Yes.

Q. And a chattel mortgage and an agreement to purchase the business? A. Right.

Q. Do you know where each of those were signed? A. Yes.

Q. Where?

A. At Mr. Weingarten's office.

Q. All at one time?

A. With four of us present; Montgomery, Hutchison, Currence and myself.

Q. I show you a photostat, Mr. Loe, with the original agreement signatures, and ask if that bears your signature? A. Yes, it does.

(Testimony of Mr. Loe and Mr. Currence.)

Q. Did you see the date on that agreement above your signatures?

A. 27th of August—I said to the best of my knowledge.

The Court: That is all right, don't worry about that. Mr. Shapro, do you have other witnesses?

Mr. Shapro: No; I am going to call the Respondent as an [4] adverse witness.

Mr. Haas: I have some other witnesses to be sworn.

The Court: Now, Mr. Haas, who are your other witnesses?

Mr. Haas: I would like Mr. Tanner, Mr. Montgomery, and Mr. Hutchison, all to be sworn.

The Court: Who first?

Mr. Haas: I will call Mr. Montgomery.

JACK MONTGOMERY

produced as a witness on behalf of the Respondent, was sworn by the Court, and testified as follows:

Direct Examination

The Court: What is your first name?

A. Jack.

The Court: You may proceed, Mr. Haas.

By Mr. Haas:

Q. Mr. Montgomery, you are one of the partners in General Equipment that purchased the business from Mr. Tanner?

A. That's right.

(Testimony of Jack Montgomery.)

Q. In the purchase of that business do you recall the negotiations involved? A. I do.

Q. Do you recall what documents were executed?

A. Remembering back, we signed the agreement in Weingarten's office before September first, and the chattel mortgage was signed in the place of business—I couldn't tell you the exact date but it would be 10 or 12 days afterwards.

Q. After what?

A. After we took possession.

Q. Of the business? A. That is correct.

Q. Do you recall why this delay occurred? [5]

A. The figures weren't up to date, and the book-keeper who was taking care of the books for both ourselves and Mr. Tanner was on vacation, and we waited for him to finish up the mortgage and the figures.

Q. How did the chattel mortgage get to the place of business; do you recall who brought it there?

A. I believe Mr. Tanner brought it down at that time.

Q. Who signed it there, do you recall?

A. All four of us signed it there.

Cross-Examination

By Mr. Shapro:

Q. Mr. Montgomery, what time of the day was this mortgage signed?

A. That I couldn't tell you.

(Testimony of Jack Montgomery.)

Q. Was Mr. Weingarten at the place of business? A. Not to my knowledge.

Mr. Shapro: No further questions.

The Court: And the next gentlemen you want?

Mr. Haas: Mr. Hutchison.

W. D. HUTCHISON

produced as a witness on behalf of the Respondent, was sworn by the Court, and testified as follows:

The Court: What is your first name?

A. W. D., initials only.

Direct Examination

By Mr. Haas:

Q. Mr. Hutchison, you are one of the partners that took over this General Equipment Company last year from Mr. Tanner? A. Yes. [6]

Q. Do you recall the situation that led up to the execution of the document in connection with the purchase of the business? A. Yes.

Q. Will you explain it to the Court in your own words?

A. We met Mr. Weingarten at his office about the first of September and he drew up the agreement between the four of us. As I recall it was several days later that the inventory was brought down and the contract with Tanner was signed several days later—I don't know exactly.

Q. This document that was brought down; where was it brought?

(Testimony of W.D. Hutchison.)

A. To the office of General Equipment.

Q. How long had you been in business there at that time? A. Approximately 12 days—14.

Q. What day did you take over the business?

A. First day of September.

Q. Who brought the mortgage down there for you to sign?

A. I am not sure; either Mr. Tanner brought it or I went up to his office and brought it to General Equipment.

Q. Did you sign it at that time? A. Yes.

Q. In the presence of any other persons?

A. Yes, I believe all four of us.

Q. Did you all sign? A. Yes.

Q. What happened to the chattel mortgage then?

A. It was sent back to Weingarten's office, I believe.

Q. Do you know who took it to Weingarten's office?

A. I think possibly I did, or Mr. Tanner. [7]

Cross-Examination

By Mr. Shapro:

Q. Mr. Hutchison, was Mr. Weingarten present when the four of you signed this chattel mortgage at the office of General Equipment Company?

A. Yes, sir, I believe he was.

Mr. Shapro: That is all.

BENJAMIN L. TANNER

produced as a witness on behalf of the Respondent, was sworn by the Court, and testified as follows:

The Court: What is your full name?

A. Benjamin L. Tanner.

Direct Examination

By Mr. Haas:

Q. Mr. Tanner, you were the seller at the General Equipment Company last year? A. Yes.

Q. And you sold to Mr. Loe, Mr. Currence, Mr. Hutchison, and Mr. Montgomery? A. Yes.

Q. Do you know what documents were executed in the sale of that business?

A. There was an agreement of sale and chattel mortgage and the note secured by the chattel mortgage—that I know.

Q. When were all of these documents—do you recall when these documents were executed?

A. Well, the agreement of sale was signed before the first of September in Mr. Weingarten's office; the chattel mortgage was not signed until the 12th or 13th of September by myself and all the partners—by all the partners. There was a condition of the payment—of the down-payment—that the chattel [8] mortgage be delivered to Mr. Weingarten before I could be paid the \$5,000.00 down-payment; I remember very distinctly I was trying to get the signatures and get the amount fixed in the note that was to be secured by the chattel mortgage.

(Testimony of Benjamin L. Tanner.)

Q. Was there any reason for this delay of execution?

A. Yes, we had to verify certain accounts receivable and certain other items to be included in the amount of the note which was the price of the business less \$5,000.00, and we hadn't computed all those things. The bookkeeper who was working on them wasn't able, and it took us that long to get the final determination.

Q. Was any financing necessary?

Mr. Shapro: I object to that as suggestive—

The Court: Sustained.

Q. What was the contemplated financing of the business when you signed the agreement?

Mr. Shapro: I submit, if your Honor please, it is an agreement in writing and speaks for itself; that is the best evidence.

The Court: The Court doesn't have it.

Mr. Shapro: There is another copy.

Q. (By Mr. Haas): Referring to paragraph 4, page 2 of that agreement, certain financial matters were mentioned there: Referring to the Veterans Administration guarantees—were those carried through?

A. No, they were unsuccessful in getting those arranged for; [9] that method of financing was abandoned.

Q. Would any delay in execution of the mortgage have reference to the infeasibility of financing?

Mr. Shapro: I object to it as leading and sug-

(Testimony of Benjamin L. Tanner.)

gestive. If Counsel desires to testify, he may be sworn.

The Court: Sustained.

Q. Were there any other reasons for the delay in execution of the mortgage other than working with your accountant?

A. Well, the details of financing had to be worked out—the final agreement on payment, what the down-payment and the balance of the installment payments would be.

Q. You have testified that you did not receive any payment from Mr. Weingarten on this business until you had turned the mortgage over to him: is that right? A. That is correct, yes.

Q. How was the payment made to you?

A. It was a check from Mr. Weingarten for \$5,000.00 which I received on October 13th—on September 13th.

Q. What day of the week was it that you received this?

A. Friday. It was paid when I delivered the mortgage to Mr. Weingarten for recording.

Q. What date did you say that was?

A. September 13th.

Q. Friday?

A. Friday, September 13th. I was told he was going to attend to the recording immediately—

Mr. Shapro: I move to strike the answer as to what he was told. [10]

The Court: So ordered.

(Testimony of Benjamin L. Tanner.)

Q. You say you delivered the chattel mortgage and received a check in return for it?

A. That is correct.

Mr. Haas: I would like to enter into evidence the check——

The Court: First the Court is going to mark the Agreement as Respondent's No. 1.

Mr. Shapro: You are offering this check into evidence, Mr. Haas?

Mr. Haas: Yes.

Mr. Shapro: No objection.

The Court: Respondent's No. 2.

Q. (By Mr. Haas): Mr. Tanner, would you examine that check when the Referee is through with it and tell the Court whether you recognize it?

A. Yes.

Q. What check is it; how do you recognize it?

A. It is a check I received from Mr. Weingarten when I delivered the chattel mortgage.

Q. Does it bear an endorsement by you?

A. Yes.

Q. When was this check given you?

A. September 13th.

Cross-Examination

By Mr. Shapro:

Q. Mr. Tanner, you said in the beginning of your testimony that there was a delay in the signing of the chattel mortgage by the four partners? A. Yes.

(Testimony of Benjamin L. Tanner.)

Q. Will you take a look at this mortgage and tell me where you signed that mortgage, please?

A. I didn't sign the mortgage. [11]

Q. But you testified that was one of the reasons there was a delay—that you had to sign it, too?

A. No, I merely said I thought the four partners and I signed at the time. I was mistaken, I didn't sign it.

Q. You are quite sure you didn't receive this check till the 13th of September?

A. Yes, definitely.

Q. Tell me why the bank endorsement shows the deposit to your account on September 11th?

A. I don't think it was deposited on September 11th.

Q. I ask you to look at the endorsement of the American Trust Company that shows September 11th?

A. I don't see it says September 11th; I think that is September 13th.

Mr. Shapro: All right, we will let the Judge decide.

Mr. Haas: May I see that? (Looking at document.)

Q. (By Mr. Shapro): As I understand, Mr. Tanner, when you took this mortgage in it had been signed by the four partners at their place of business? A. Yes.

Q. Mr. Weingarten was not present when they signed it? A. No.

Q. What date was it that you saw them sign?

(Testimony of Benjamin L. Tanner.)

A. I think it was the 12th or 13th.

Q. 12th or 13th of September? A. Yes.

Mr. Shapro: I have no further questions. I would like to offer in evidence a certified copy of the chattel mortgage.

The Court: Trustee's No. 1.

Mr. Haas: Mr. Shapro, I think if you examine that check [12] you may see that it was deposited on September 13th.

Mr. Shapro: All I can see is—it was paid on the 11th and from the perforation and from the endorsement of the American Trust Company, to my pair of glasses it looks like it is the 11th; it doesn't look like the 13th to me.

The Court: Anything further?

Mr. Haas: I have four Affidavits; one of Mr. Weingarten——

Mr. Shapro: I object to any ex parte affidavits; if any evidence is to be offered I insist that it be here in the form of testimony. and if Mr. Haas desires a continuance for that purpose I will not agree to accept any ex parte affidavits.

The Court: With the objection on the part of the Trustee I have no alternative but to continue it; in other words, he is certainly entitled to an opportunity to examine the four witnesses or affiants; but as far as the Court is concerned it would be without prejudice to your clients' rights; you will be afforded whatever opportunity you desire to furnish any testimony. Anything further, gentlemen?

Mr. Shapro: Nothing further as far as the Trustee is concerned.

Mr. Haas: Nothing further.

The Court: Do you gentlemen desire that the matter be carried until you produce this witness?

Mr. Haas: I was going to produce him to substantiate the testimony of Montgomery and Hutchison. They have already testified; if you want Mr. Weingarten here—— [13]

Mr. Shapro: Do you want him here?

Mr. Haas: I don't think he can be here for some time, and frankly I don't think he can add anything further, other than the fact that he is an attorney and notary and would testify to the same effect.

Mr. Shapro: At the opening you stated that your only objection to the mortgage was delay in recordation. On the basis of the testimony I desire to have it understood it is on the ground that the mortgage was not properly acknowledged as required by statute, anyway. [14]

San Jose, California, August 22, 1958

The Court: Are you ready to proceed, gentlemen?

Mr. Haas: Yes.

SAUL M. WEINGARTEN

produced as a witness on behalf of the Respondent, was sworn by the Court, and testified as follows:

The Court: What is your full name?

A. Saul M. Weingarten.

(Testimony of Saul M. Weingarten.)

The Court: Mr. Weingarten, where do you reside?

A. I reside at 4135 Crest Road and Chamis Way, Pebble Beach.

Q. What is your occupation or business?

A. I am an attorney.

Direct Examination

By Mr. Haas:

Q. Referring to the transfer of business of General Equipment Company to Mr. Hutchison, Mr. Montgomery, Mr. Currence and Loe, the four purchasing parties last year—are you familiar with that transaction?

A. Yes, I acted for them, acted as escrow holder in that [1*] transaction.

Q. Would you recall how the transaction went?

A. Mr. Tanner and the four others spoke of the possible sale and tentative terms of sale were agreed upon, involving the payment of \$5,000.00 down by the purchasers, and each of them to obtain a G. I. guarantee or loan for most of the balance. Subsequent to this the purchasers found they couldn't obtain the guarantee loan, and I drew up another agreement. Mr. Tanner agreed that he would sell to them without the guarantee loan—taking, instead, a chattel mortgage on the equipment which he was selling. The agreement was entered into on the 27th day of August, and on the 31st day of August a

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Saul M. Weingarten.)

chattel mortgage was drawn; at that time the chattel mortgage could not be completed because it was necessary for the parties——

Mr. Aronson: Just a moment, Mr. Weingarten, the day you refer to—you said it could not be completed on the 31st of August?

A. 31st of August, that is correct.

Mr. Aronson: If I may interject, you acknowledged the document which is in evidence—I don't have it; is that correct?

A. That is correct.

Q. And the writing of the date that appears on the first line; is that in your handwriting?

A. It is. The document could not be completed on the 31st day of August; the reason it couldn't be completed is that the parties at that time agreed——

Mr. Aronson: I am going to object to any testimony that the [2] document could not be completed—any testimony that bears on that, your Honor. The document speaks for itself; it was made and executed on the 31st day of August, and any testimony given by Mr. Weingarten would be by way of impeachment of any witnesses called.

The Court: Well, Mr. Aronson, I would prefer that counsel for the respondent ask the question, and then if the question is objectionable you make the objection.

Q. (By Mr. Haas): The document was not signed on the date it bears?

A. No, it was not.

(Testimony of Saul M. Weingarten.)

Q. Can you explain why?

Mr. Aronson: I am going to object to this question and others along this line for the reason stated, and I ask that it be stricken.

The Court: Objection overruled.

Q. (By Mr. Haas): Now, can you explain why?

A. The parties would have to go through all the equipment on their inventory and agree on an amount, which they did between the 31st of August and the 13th of September. During that time I held the \$5,000.00 which had been paid, in escrow. On the 13th of September the document was signed as their signatures appear here. On that same day all four parties named—Mr. Loe, Mr. Currence, Mr. Hutchison and Mr. Montgomery—came to my office for the purpose of—primarily they were entering into a partnership, and I drew the partnership agreement for them. Also, they wanted me to explain to them at that time generally [3] the differences between partnerships, corporations, and various forms of doing business. At that time, on the 13th day of August, I took their acknowledgment as a Notary Public. Now, the date that was written in that appears in my handwritting is an error, and it states the 31st day of August. My only explanation of that is that I believe I must have copied this from the date appearing on the first page of the chattel mortgage. I know that they signed on the 13th of August and that I took the acknowledgment on that date.

The Court: Of August?

(Testimony of Saul M. Weingarten.)

Mr. Weingarten: Of September.

The Court: And when you said the 13th of August before, you meant the 13th of September?

A. Yes.

The Court: And you took the acknowledgment on that date?

A. I took the acknowledgment on that date. Also, on that date I forwarded the instrument to the Monterey County Recorder for recording. I also issued a check on that date to Mr. Tanner in the amount of \$5,000.00 which I was holding as escrow holder.

The Court: Counsel, this is Respondent's No. 2 of last week—not the date you are speaking about.

Q. (By Mr. Haas): Mr. Weingarten, do you recognize that? (Showing the witness a document.)

A. I do; it bears my signature and the amount of \$5,000.00, being the check to which I had reference.

Q. When did you issue that? [4]

A. On the 13th day of September, after taking the acknowledgment and sending this in for recordation. I believe the 13th was Friday, and this was recorded on the next business day, in the office of the County Recorder, on the 16th. It bears time of recording as "8:20 a.m."

The Court: Is that all, Counsel?

Mr. Haas: Yes.

(Testimony of Saul M. Weingarten.)

Cross-Examination

By Mr. Aronson:

Q. Do you keep a register of all documents?

A. I do—a separate register of all things outside the office. Things in the files, I do not; that is my record of it.

Q. You didn't keep a record of this?

A. Not as a Notary; I have it in my own file.

Q. When was the mortgage delivered to the Bankrupts; on the 31st of August or on the 13th of September?

A. Delivered to the Bankrupts? It was on or about the 31st.

Q. Excuse me—delivered to——

A. To Mr. Tanner.

Q. By the Bankrupts?

A. That's right; that was on the 13th.

Q. It is your testimony that it was signed by them when? A. On the 13th.

Q. Who prepared this document?

A. I did. It is my testimony that they actually acknowledged it on the 13th. They, together with Mr. Tanner, had jointly taken the inventory of the equipment during the period elapsing between the 31st of August and the 13th of September.

Q. The description of the items to be covered by the mortgage: [5] When was that put in, Mr. Weingarten? A. May I see it?

(Counsel hands document to the witness.)

Qty.	Description	Serial or Model No.
Trailers:		
1	Metal Rollmaster	
1	All Metal Dump 4x8'	
Trucks (Hand Type) Refrig. Dolleys:		
2	Hand trucks—good @ \$5.50	
1	Hand truck—old	
Tractors & Accessories—Misc. Farm Equip.		
1	Harrow w/bar (wood)	ID1-4365
1	Farmall Cub	109579
1	2-way Plow for cub 189	
1	Leveling Blade for cub 189	
1	Spartan Sprayer—Mod. 33	J-43722
1	Gilson Corporal Garden Tillers @ \$124.00	
	Vacuum Cleaner—Black & Decker	
Trucks Being Sold as of 9/1/57		
	1951 Dodge $\frac{3}{4}$ Ton Express Pickup	
	1938 Dodge Flat Rack	
	1946 Ford 2 Ton	
	1947 Studebaker $\frac{3}{4}$ Ton Pickup	
	1949 Ford Panel	
	1951 Chevrolet Van	
Shop Equipment Being Sold as of 9/1/57		
	Bench Vises, Coils, Condensers	
	Floor Jack	
	Chain Hoist	
	Power Grinder	
	A. C. Welder—1955 Birdshell, 110-220 Model 190	
	Hi-Voltage Tester—1957	
	Lawn Mower Sharpener “Modern” 1956	
	Back-Lapping Machine “Modern” 1957	
	Heater—overhead for office bldg. 1957	
	Gas Stove	
	Store Fixtures	
Office Equipment Being Sold as of 9/1/57		
	Cash Register	
	Clary Adding Machine	
	Typewriter—Underwood	
	Desks, Cabinet, Cases, etc.	

as security for the payment to the said mortgagee of Twenty-five Thousand, One Hundred Sixty-two Dollars and thirty-three cents (\$25,162.33) lawful money, of the United States of America, with interest thereon at the rate of six (6) per cent per annum, according to the terms and conditions of that certain promissory note executed and delivered by the mortgagors to the mortgagee, of even date herewith, and in the words and figures following, to wit:

Principal and interest shall be payable in monthly payments of \$400.00 or more each, on the first day of each and every month beginning on October 1, 1957, until April 1, 1958, then thereafter said payments at the rate of \$600.00 per month or more on the first day of each and every month beginning on said April 1, 1958, and extending to October 1, 1958; then at the rate of \$800.00 or more each, on the first day of each and every month beginning on the said October 1, 1958, and continuing until said principal sum has been paid.

It is also agreed that if the mortgagors fail to make any payment as in said promissory note provided, or shall fail to make payment of any other moneys secured hereby, then the mortgagee may take possession of said property, using all necessary force so to do, and may immediately proceed to sell the same in the manner provided by law, and from the proceeds pay the whole amount of the debt or debts secured by this mortgage, and all costs of sale, including counsel fees not exceeding Twenty (20)

per cent upon the amount due, paying the surplus to the mortgagors. And for the purpose of taking possession of and selling said property, the mortgagors do hereby appoint the said mortgagee attorney, irrevocable, with full power of substitution and revocation.

This mortgage is also given as security for the repayment of sums that may be advanced, expenditures that may be made, or indebtednesses or obligations that may be incurred subsequent to the execution hereof, up to and including the sum of \$5,000.00.

In Witness Whereof the said mortgagors have executed these presents the day and year first above written.

Signed and Executed in the Presence of:

/s/ WALLACE DAWSON LOE,

/s/ JOHN O. CURRENCE,

/s/ W. D. HUTCHISON,

/s/ JACK B. MONTGOMERY.

Book 1816, Page 358.

State of California,

County of Monterey—ss.

On this 31st day of August in the year of our Lord one thousand, nine hundred and fifty-seven,

before me, Saul M. Weingarten, a Notary Public in and for the said County of Monterey, State of California, residing therein, duly commissioned and sworn, personally appeared Wallace Dawson Loe, John O. Currence, W. D. Hutchison and Jack B. Montgomery, known to me to be the persons described in and whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal at my office in said County of Monterey the day and year in this certificate first above written.

[Seal] /s/ SAUL M. WEINGARTEN,
Notary Public in and for Said County of Monterey,
State of California.

25418. Monterey County Official Records. Recorded at request of Twohig, Weingarten & Schmidt, 1957, Sep. 16, A.M. 8, 28. Book 1816, Page 355. 4. 40

/s/ EMMETT M. MENAMIN,
Recorder.

Received in evidence August 15, 1958.

(Testimony of Saul M. Weingarten.)

A. The initial list, that is, the list of items indicating the description, was put in between the 31st of August and the 13th of September; the amount which is on the second page I have entered as \$21,162.33, was put in on the 13th; they had not arrived at that figure until that time.

Q. When did they sign it?

A. I believe it was on the 13th; I know they acknowledged it on that date.

Q. Where? A. In my office.

Mr. Aronson: I have no further questions.

The Court: Submitted?

Mr. Haas: I would like to call Mr. Tanner for just one question.

Mr. Aronson: Who?

Mr. Haas: Mr. Tanner.

Mr. Aronson: I will object; the matter was called for the sole purpose of having Mr. Weingarten testify.

The Court: What is the basis of submission; do you gentlemen desire to send me a memo or not? From what I know about it I think it is purely a question of fact.

Mr. Haas: I believe on an Order to Show Cause—Mr. Aronson, you and I were here last week—

The Court: Mr. Aronson was not, and you will admit that there is some conflict in the testimony—isn't that true?

Mr. Haas: That is correct. [6]

The Court: I think you had better send me a memorandum; make it as informal as you want.

Fifteen days for the Trustee, and ten for the Respondent.

[Endorsed]: Filed December 4, 1958, [7] Reference.

TRUSTEE'S EXHIBIT No. 1

Book 1816, Page 355 and Page 356.

Mortgage of Chattels

This Mortgage made the thirty-first day of August, one thousand nine hundred and fifty-seven, by Wallace Dawson Loe, John O. Currence, W. D. Hutchison and Jack B. Montgomery, by occupation Salesmen-Mechanics, mortgagors, to B. H. Tanner, by occupation General Contractor, mortgagee.

Witnesseth: That the mortgagors mortgage to the mortgagee all that certain personal property situated and described as follows, to wit:

Qty.	Description	Serial or Model No.
1	Aerifier—"Spiker"	4054
1	Concrete Finish. Mchn. Whitman	625665
1	Cement Finisher Mall Power Trowel TG-36..	886644
1	Cement Mixer 3½ Sack Jaeger	83221
1	Concrete Mixer—¼ Sack Allen	1178909E
2	Cement Mixers—Gibson @ \$112	24T-PRM
1	Grinder-Mall	466223
Demolition/Drilling Equipment:		
1	Earth Drill w/9" auger	549-36242
1	12" Auger for earth drill	
1	Drilling Tool-Demo Elec. Hammer	S-541 (Ext.)
1	Hammer Milw. (#290 elec.)	38-4285

Qty.	Description	Serial or Model No.
1	Schramm B-80 Paving Breaker	47E0092
1	Schramm Clay Digger-Spade	48J-0308
1	Backfiller-Tamper BT-32	32-2322
1	Syntron Paving Breaker & Access.	H56PB374191
1	Concut Concrete Saw Mchn.—2 bids	2664395
1	Schramm B-60 Paving Breaker	60-2552
1	Vibrator-Mall (Elec.)	EV-2514
1	Vibrator-Mall 7' Ext.	929819

Elec. Extension Cords & Fittings

Engineering Equipment:

1	Leveler-McCord	
1	Dumpy Level	1046-1F

Generators/Compressors:

1	Delco 3 KW (elec.) Gen. Wise. Motor	1923248
1	Schramm 105 Compressor	110542

150' Air Hose Couplings:

1	C.P. 1/3 HP Compr.	Mod. C.P.
1	DeVilbiss Air Compressor	120673

Heater:

1	Chinook A-100 Wind Heater	M-4516
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Mowers (lawn type):

1	Cooper Klipper 20" reel	751853
4	17" Eclipse Rotary Mowers	236142
1	Lark Eclipse	

Paint Equipment:

1	Decora Spray Paint Outfit (gas) w/air compressor	3BGK 11½ HP
1	Binks spray gun & access.	

Polishers, Sanders, Edgers, Buffers (Floor Type):

1	Clarke LV8-8" Sander	905233
1	Clarke LV5-5" Edger	11396
15	Clarke FM-12 Maintainers	
1	7" Buffer	34100
1	Cycle Polisher	

Qty.	Description	Serial or Model No.
Pumps:		
1	Jaeger Dewater (Wisc. Eng.)	39805
1	Fairbanks Morse 51½ Dewater	65673
Routers:		
1	Elec. Portable P-C	5040
1	Mall Elec. Hand	52850
Rug Cleaner:		
1	Rug Scrubber, Vacuum Attach.	4250
Sanders (Elec. Hand Type):		
1	Mall #31 Belt Sander	72380
1	Mall #25 Orbit Sander	
1	Porter Cable Orbit Sander	
Saws:		
1	McCulloch Chain 30"—2 man	1225-A
1	Milw. Sawzall	414
1	Clinton Chain Saw	49804
1	McCulloch 47 Auger	34272
2	Mall "72" Portable @ \$52.50.....	L8410-L8254
1	Mall Chain (Elec.)	931657
1	Skil Chain (Elec.)	606
1	Mall "54" Portable	G80351
Scaffold & Plasterboard Positioner:		
1	Scaffold—Self Propelled	
1	Panel Positioner-Erector	
Seythes:		
1	Jari Sr. 36" Power Seythe	36642
1	Jari Jr. 28" Power Seythe	63257
Skil Tools:		
Drills, Hammer, Grinder (Asst'd)		
Snap Tie Wedges:		
1360 Snap Tie Wedges		
Stakes:		
750 Asst'd stakes (30", 36", 40")		

[Title of District Court and Cause.)

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the Attorneys for the Appellant.

Receiver's petition for leave to sell personal property free and clear of liens. Order to show cause. Order denying receiver's petition for leave to sell personal property free and clear of liens. Petition for review. Referee's certificate on petition for review. Order affirming ruling of the Referee. Notice of appeal. Designation of contents of record. One volume reporter's transcript Aug. 15-22, 1958.

In Witness Whereof, I have hereunto affixed the seal of the above-entitled Court this 14th day of April, 1959.

[Seal]

C. W. CALBREATH,
Clerk,

By /s/ J. P. WELSH,
Deputy Clerk.

[Endorsed]: No. 16442. United States Court of Appeals for the Ninth Circuit. O. W. Irwin, Trustee of the Estate of General Equipment Co., a co-partnership composed of Wallace D. Loe and John O. Currence and Wallace D. Loe and John O. Currence, individually, bankrupts, Appellants, vs. S. H. Tanner, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: April 14, 1959.

Docketed: April 24, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16442

O. W. IRWIN, Trustee of the Estate of General
Equipment Co., a Co-partnership Composed of
Wallace D. Loe and John O. Currence, Bank-
rupt,

Appellant,

vs.

B. H. TANNER,

Appellee.

APPELLANT'S CONCISE STATEMENT OF
POINTS URGED ON APPEAL

Comes now O. W. Irwin, Trustee, Appellant herein, in accordance with Rule 19 (6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, and specifies the following as a concise statement of the points on which he intends to rely upon this appeal from the Order made and entered by Honorable Lloyd H. Burke, Judge of the United States District Court for the Northern District of California on the 10th day of March, 1959, more particularly specified and described in the Notice of Appeal heretofore filed with the Clerk of said District Court on the 31st day of March, 1959, as follows:

1. That said Order was not supported by the evidence and is contrary to the law in that:

a. The finding of fact contained in the Referee's Order Denying Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens dated November 3, 1958, and numbered 2 (and which was, by said Order of said District Judge, approved and confirmed), is contrary to the competent evidence adduced upon the trial of the issues joined between Appellant and Appellee by said Receiver's Petition for Leave to Sell Personal Property Free and Clear of Liens.

b. The aforesaid finding of fact is not supported by the competent evidence adduced upon the trial of the aforesaid issues more particularly referred to in said Referee's Order.

c. The conclusion of law made by said Referee in Bankruptcy and numbered 2 thereof is contrary to law in that it is not supported by competent evidence adduced upon the trial of said issues more particularly referred to in said Referee's Order.

d. That it affirmatively appears from all of the evidence adduced upon the trial of said issues that the chattel mortgage was not acknowledged according to law.

e. That it affirmatively appears from all of the evidence adduced upon the trial of said issues and from said Referee's Order, that said Referee in Bankruptcy based his Order solely upon the testimony of the Notary Public as to the acknowledgment of said chattel mortgage, and which testimony

was admitted over the proper objection of Appellant, as such Receiver.

Dated May 4, 1959.

SHAPRO & ROTHCHILD
AND JAMES M. CONNERS,

By /s/ DANIEL ARONSON, JR.,
Attorneys for Appellant.

[Endorsed]: Filed May 5, 1959, U.S.C.A.

